IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 3401/2006
(Shiv Narain Godara Vs. State of Rajasthan & Ors.)

Date of Order : 15/01/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr.V.K.Bhadu for the petitioner
Mr.Rameshwar Dave, Dy.Govt. Advocate for non-petitioner No.1.
Mr.Manish Dadhich for non-petitioner No.2.
Mr.Sushil Bishnoi for non-petitioner NO.3.

BY THE COURT:-

By the instant writ petition under Articles 226 & 227 of the Constitution of India, the petitioner seeks a direction to the non-petitioners to take him on duty w.e.f. 7.12.2005 along with all consequential benefits.

I have heard learned counsel for the parties.

At the outset, learned counsel for the petitioner submits that the petitioner has not claimed any relief against non-petitioners No. 1 State of Rajasthan through Registrar, Cooperative Society, Jaipur and non-petitioner No. 2 The Ganganagar Kendriya Sahakari Bank, Sri Ganganagar. Therefore, the writ petition remains only against the non-petitioner No.3

Hanuman, President of Gram Seva Sahakari Samiti, Ganguwala Jattan, Tehsil Raisinghnagar, district Sri Ganganagar.

Learned counsel for the non-petitioner No.3 submits that the non-petitioner has been impleaded by name though he is President of Gram Seva Sahakari Samiti and writ petition against Gram Seva Sahakari Samiti is not maintainable as according to learned counsel for the non-petitioner No.3, the Gram Seva Sahakari Samiti is not State within the meaning of Article 12 of the Constitution of India. He has relied on a recent decision of Hon'ble Supreme Court in Bhadra Shahakari S.K. Niyamita Vs. Chitradurga Mazdoor Sangh and Others (2006) 8 SCC 552.

Learned counsel for the petitioner submits that even if the non-petitioner No.3 is not considered to be a State within the meaning of Article 12 of the Constitution of India, yet the writ petition is maintainable against the non-petitioner No.3. He has relied on a Constitution Bench decision of Hon'ble Supreme Court in Zee Telefilms Ltd. and Another Vs. Union of India and Ors. (2005) 4 SCC 649.

In Zee Telefilms Ltd. and Another Vs. Union of India and Ors. (supra) while considering the provisions of Article 12 of the Constitution of India, Hon'ble Supreme Court Per Majority held that the intention of the Constitution-framers in incorporating Article 12 was to treat such authority which has

been created by law and which has got certain powers to make laws, to make rules and regulations to be included in the term "other authorities" as found presently in Article 12. It was further held that in conclusion, it should be noted that there can be no two views about the fact that the Constitution of this country is a living organism and it is the duty of courts to interpret the same to fulfill the neds and aspirations of the people depending on the needs of the time. It is noticed earlier in this judgment that in Article 12 the term "other authorities" was introduced at the time of framing of the Constitution with a limited objective of granting judicial review of actions of such authorities which are created under statute and which discharge State functions. However, because of the need of the day the Apex Court in Rajasthan SEB Vs. Mohan Lal AIR 1967 SC 1857 and Sukhdev Singh Vs. Bhagatram Sardar Singh Raghuvanshi (1975) 1 SCC 421 noticing the socio-economic policy of the country thought it fit to expand the definition of the term "other authorities" to include bodies other than statutory bodies. This development of law by judicial interpretation culminated in the judgment of the seven-Judge Bench in the case of Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology (2002) 5 SCC 111. It is to be noted that in the meantime the socio-economic policy of the Government of India has changed and the State is today distancing itself from commercial activities and concentrating on governance rather

than on business. Therefore, the situation prevailing at the time of Sukhdev Singh is not in existence at least for the time being, hence there seems to be no need to further expand the scope of "other authorities" in Article 12 by judicial interpretation at least for the time being. It should also be borne in mind that as noticed above, in a democracy there is a dividing line between a State enterprise and a non-State enterprise, which is distinct and the judiciary should not be an instrument to erase the said dividing line unless, of course, the circumstances of the day require it to do so. On these premises, Hon'ble Supreme Court held that in view of the above view of the matter, the second respondent Board cannot be held to be a State for the purpose of Article 12 and consequently the writ petition filed under Article 32 of the Constitution was held to be not maintainable and the same was dismissed against the respondent Board therein.

In Bhadra Shahakari S.K. Niyamita Vs. Chitradurga Mazdoor Sangh and Others (supra) the Hon'ble Supreme Court relying on the decision of Hon'ble Supreme Court in G.M.Kisan Sahkari Chini Mills Ltd. Vs. Satrughan Nishad (2003) 8 SCC 639, Federal Bank Ltd. Vs. Sagar Thomas (2003) 10 SCC 733, Gayatri De Vs. Mousumi Coop. Housing Society Ltd. (2004) 5 SCC 90, Shrikant Vs. Vasantrao (2006) 2 SCC 682 and Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology (2002) 5 SCC 111 held that the Cooperative Sugar factory registered under

Cooperative Societies Act with a view to earn profit for the members of its society is purely a non-governmental organisation and will not fall within the definition of "State" under Article 12 of the Constitution of India and therefore, the writ petition filed by the petitioner is not maintainable against the Cooperative Sugar Factory.

In the instant case, learned counsel for the petitioner failed to show as to how the Gram Seva Sahakari Samiti was created by law and has got certain powers to make laws or to make rules and regulations in order to include it in the term "other authorities" in Article 12 of the Constitution. The instant case is squarely covered by the decision of Hon'ble Supreme Court in Bhadra Shahakari S.K. Niyamita Vs. Chitradurga Mazdoor Sangh and Others (supra).

In this view of the matter, in my view, the non-petitioner No.3 Gram Seva Sahakari Samiti is not State within the meaning of Article 12 of the Constitution of India, and therefore, the writ petition against Gram Seva Sahakari Samiti is not maintainable.

In the result, the writ petition stands dismissed. There shall be no order as to costs.

(H.R.PANWAR),J.

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